REGULATORY AFFAIRS UPDATE

TO:	Board of Directors
MEETING:	September 26, 2012
FROM:	Steven Guiton, Vice-President and Chief Regulatory Officer
PURPOSE:	Inform Board members on various regulatory matters, including an update on CBC/Radio-Canada's Licence Renewal process
DATE:	September 7, 2012

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SIGNIFICANT POINTS

- Regulatory Affairs was successful in defending CBC Music against challenges from private radio interests, obtaining a CRTC decision that ensures that this free on-line music service can continue to operate without any regulatory restrictions going forward.

- We also obtained CRTC approval for our initiative to cease analogue TV transmission, effective July 31, 2012. This clears the way for significant cost savings, and for the roll-out of the Transmission Asset Strategy.

- CBC/Radio-Canada licence renewal hearings are on track for a 2-week public hearing in Ottawa beginning November 19, 2012. We continue to seek two key objectives: regulatory flexibility and new advertising revenues for Radio2 and Espace Musique. The CRTC officially opened this process to the public on September 5, 2012.

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CBC/RADIO-CANADA
REGULATORY AFFAIRS UPDATE

Presentation to
CBC/Radio-Canada Board of Directors

Regulatory Affairs
CBC/Radio-Canada

September 26, 2012

regulatory affairs
affaires réglementaires

REGULATORY UPDATE: A SUMMARY

This regulatory update includes information on the following matters:

- The CRTC's recent dismissal of a complaint by Stingray Digital against CBC/Radio-Canada's CBC Music application;
- The CRTC's recent approval of CBC/Radio-Canada's decision to cease analogue transmission;
- The Bell-Astral transaction;
- The Supreme Court of Canada's consideration of the value for signal issue;
- Recent CRTC changes respecting its approach to new media information gathering; and
- CBC/Radio-Canada's upcoming licence renewal hearing and corresponding strategic issues.

REGULATORY UPDATE:
STINGRAY COMPLAINT AGAINST CBC MUSIC

- On August 14, 2012, the CRTC dismissed a complaint by Stingray Digital Group (Stingray) against CBC Music.
- Stingray had alleged that CBC Music enjoys an 'undue preference' in its operations due to the fact that: (a) CBC receives government funding; and (b) CBC has obtained preferential copyright rates.
- In its decision, the CRTC noted that CBC's government funding is set by Parliament and not under CBC's control. Furthermore, it noted that CBC's copyright fees are set by the Copyright Board.
- Given these facts, the CRTC determined that CBC Music does not operate by way of an undue preference and dismissed the complaint.
- This decision ensures that CBC can continue to program CBC Music without any regulatory restrictions going forward.

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REGULATORY UPDATE: ANALOGUE SHUTDOWN

- On July 14, 2012, the CRTC approved CBC/Radio-Canada's application to revoke/delete licence authorities relating to analogue television transmission.

- In its decision, the CRTC noted that licences, such as those held by the CBC, are authorizations to broadcast, not an obligation to do so.

- With respect to the reduction in service to official language minority communities (OLMCs), the CRTC took note of the concerns of several parties and indicated its intention to discuss the delivery of the CBC's services to OLMCs at the upcoming licence renewal hearing.

- This clears the way for significant cost savings for the Corporation, and for the roll-out of the Transmission Asset Strategy.

REGULATORY UPDATE: BELL-ASTRAL TRANSACTION

- The CRTC's public review of BCE's proposed purchase of Astral Media Inc. was held this month in Montreal.

- Virtually all of the BDUs – with the exception of Shaw Communications – filed opposing interventions and requested that the CRTC either deny the application completely or require further significant divestiture by BCE of Astral assets in order to minimize market dominance by BCE. Rogers requested that BCE be required to divest all of Astral's English language television assets.

- TV producers and media guilds did not oppose the transaction but demanded significant changes to the benefits packages in terms of amount (i.e. BCE should be required to pay more) and allocation of benefits monies.

REGULATORY UPDATE: BELL-ASTRAL TRANSACTION

- CBC/Radio-Canada considered intervening to comment on the allocation of benefits monies – which could drive up the cost of production and talent for all broadcasters – and the potential advertising market dominance of BCE in English Canada following an approval of the application.

- Ultimately, CBC/Radio-Canada did not intervene since, on balance, the proposed allocation of tangible benefits monies was largely made in accordance with CRTC policy.

REGULATORY UPDATE:
SUPREME COURT – VALUE FOR SIGNAL

- On April 17, 2012, the Supreme Court of Canada heard the 'value for signal' case following an appeal of a decision by the Federal Court of Appeal. In a 2-1 decision in 2011, the Federal Court of Appeal ruled that the CRTC has the jurisdiction to impose a 'value for signal' regime.
- A decision by the Supreme Court is pending. A positive decision will allow the CRTC to establish a regime enabling private local television stations to negotiate with broadcasting distribution undertakings a fair value in exchange for the distribution of their programming services. In other words, it will grant private local television stations a new revenue steam.
- CBC/Radio-Canada is not currently eligible to participate in such a regime pursuant to a previous CRTC determination but value for signal could have implications for carriage for many local TV stations across the country.
- If the Supreme Court affirms the decision of the Federal Court of Appeal, the CRTC will next decide whether establishing a 'value for signal' framework is in the best interests of the broadcasting system.

REGULATORY UPDATE:
NEW MEDIA INFORMATION GATHERING

- On August 14, 2012, the CRTC announced that it was disbanding its New Media Reporting Working Group given that it has fulfilled its function to the develop the process and metrics respecting an annual report for New Media broadcasting.

- The CRTC will continue to collect relevant revenues and expenses on an annual basis for the purposes of its New Media Broadcasting survey. It has also requested feedback with respect to the addition of new metrics for its New Media reporting process.

- As regulatory agencies rarely collect data with respect to an activity without an intention to regulate it, the broadcasting industry can surmise that, long term, the CRTC is continuing to assess the shift of revenues from traditional broadcasting platforms to new media-based platforms to determine when an appropriate tipping point will necessitate regulatory action.

REGULATORY UPDATE: CBC/RADIO-CANADA LICENCE RENEWAL

- A complete summary of our licence renewal application, including regulatory requests and concessions may be found at **Appendix B**.

- CBC/Radio-Canada remains on track for its **November 19, 2012** public hearing in Ottawa.

- On September 5, 2012, the CRTC officially launched the Corporation's licence renewal review process to the public.

CBC/RADIO-CANADA LICENCE RENEWAL: RECAP

- **April 4, 2012:** CBC/Radio-Canada files application to introduce national advertising on Radio 2 and Espace Musique.
- **May 18, 2012:** The CRTC announces a re-start of the licence renewal process with a hearing date of **November 19, 2012**. The CRTC also announces it intends to consider the advertising on radio application as part of the licence renewal proceeding.
- **July 16, 2012:** CBC/Radio-Canada files its revised licence renewal application.
- **July 18, 2012:** CRTC announces LPIF will be discontinued September 1, 2014.
- **July 27, 2012:** CRTC issues a Request for Information from CBC/Radio-Canada.
- **August 13, 2012:** CBC/Radio-Canada files its first Reply to the CRTC's request for information.

CBC/RADIO-CANADA LICENCE RENEWAL: RECENT DEVELOPMENTS/ASKS

- **As set out in our May 2011 licence renewal application:**
  - **Flexibility:** Seeking CRTC recognition that programming and platform flexibility is necessary to provide general-interest public broadcasting services in a constantly changing economic environment, and a rapidly changing technological environment.
- **As set out in our revised July 2012 licence renewal application:**
  - **Revenue support**: Seeking CRTC approval for national advertising on Radio 2 and Espace Musique to ensure the continued presence of these distinctive radio services.
- **As set out in our September 2012 CRTC submission:**
  - **Format Distinctiveness:** Offer assurances to the CRTC that Radio2 and Espace Musique will retain their present formats if allowed to solicit national advertising in the form of emerging Canadian artist commitments and/or commitments to broadcast distinct musical selections.
- **Adjusted financials** following the LPIF decision.

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CBC/RADIO-CANADA LICENCE RENEWAL: RECENT DEVELOPMENTS/ASKS

- Terms of trade negotiations between CBC/Radio-Canada continue in the context of the following recent developments:
  - The CMPA has now named a new President and CEO. New leadership at the CMPA bodes well for a new approach to negotiations which had previously been bogged down by an insistence on the part of the CMPA for terms identical to those which were accepted by private broadcasters; and
  - Earlier in 2012, the CRTC did not impose terms of trade conditions of licence on French-language broadcasters in the context of their licence renewal proceedings. The reluctance of the CRTC, following the departure of the previous Chairman, to now impose terms of trade conditions of licence on French-language broadcasters may indicate a new desire by the CRTC to rely on commercial negotiations to the maximum extent possible before imposing a regulatory solution.
  - A more market based approach by the CRTC may assist negotiations as independent producers will have less leverage to use the regulatory process.

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CBC/RADIO-CANADA LICENCE RENEWAL: NEXT STEPS

- Intervenors file their comments on our application on October 5, 2012.

- Ten days later - the Corporation files its reply to intervenors.

- Regulatory Affairs and key English and French services personnel begin a one-month panel preparation in the lead up to the November 19th hearing.

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CBC/RADIO-CANADA LICENCE RENEWAL: STRATEGIC CONSIDERATIONS (MANDATE)

21(1)(b)

- This means that CBC/Radio-Canada's licence renewal hearing will be focused on the current mandate of the Corporation as set out in the Broadcasting Act, including particularly an examination of English-language and French-language programming issues.

CBC/RADIO-CANADA LICENCE RENEWAL: STRATEGIC CONSIDERATIONS (OLMCS)

- In two recent CRTC decisions respecting CBC/Radio-Canada's analogue shutdown and the discontinuation of the Local Programming Improvement Fund, the CRTC has made statements respecting the importance of CBC/Radio-Canada serving official language minority communities (OLMCs) with its programming.

- The CRTC stated in both decisions that it would explore OLMCs issues further at CBC/Radio-Canada's licence renewal hearing.

- Given this renewed focus and interest on CBC/Radio-Canada's service to OLMCs, preparatory documents for the hearing will be updated to reflect more fully CBC/Radio-Canada's programming and operational plans to serve OLMCs in light of recent funding cuts.

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CBC/RADIO-CANADA LICENCE RENEWAL: STRATEGIC CONSIDERATIONS (LPIF)

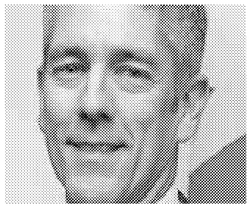
- At the renewal hearing, the CRTC will investigate fully the impact on CBC/Radio-Canada of its decision to discontinue the Local Programming Improvement Fund (LPIF) in two years.

- CBC/Radio-Canada derived substantial funding from LPIF and invested heavily in the creation of additional local programming, specifically local news, through the use of this funding.

- Absent support from LPIF, the CRTC will explore whether CBC/Radio-Canada intends to re-think its local television strategy, i.e. reduce staff, shorten programming, increase number of repeats, etc.

- This line of discussion will allow CBC/Radio-Canada to present its local/regional plans and any modifications in a thorough manner.

APPENDIX A – CRTC COMMISSIONERS



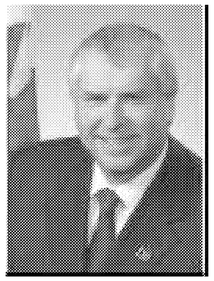
Jean-Pierre Blais - CRTC Chairman

Jean-Pierre Blais was appointed Chairperson of the Canadian Radio-television and Telecommunications Commission (CRTC) on June 8, 2012. His appointment is effective June 18, 2012, for a period of five years.

Mr. Blais holds a Bachelor of Civil Law and a Bachelor of Common Law from McGill University, as well as a Master of Laws with a focus in copyright, international trade, film and television policy from Melbourne University in Australia. He is a member of the Quebec Bar and the Law Society of Upper Canada.

Before being named Chairperson of the CRTC, Mr. Blais served as Assistant Secretary of the Government Operations Sector at the Treasury Board Secretariat. Prior to that, he was Assistant Deputy Minister of Cultural Affairs at Canadian Heritage, where his responsibilities included legislation, policies and programs relating to copyright, broadcasting, cultural industries and arts policy. Mr. Blais also held the positions of Assistant Deputy Minister of International and Intergovernmental Affairs at Canadian Heritage and Executive Director of Broadcasting at the Canadian Radio-television and Telecommunications Commission.

APPENDIX A – CRTC COMMISSIONERS



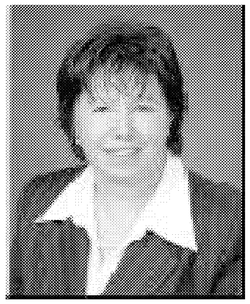
Leonard Katz – Vice-Chairman, Telecommunications

Appointed Vice-Chairman, Telecommunications, on October 12, 2007, and Acting Chairman from January 25th 2012 to June 18, 2012. He joined the Commission in 2005 as Executive Director, Telecommunications, before assuming his most recent position of Executive Director, Broadcasting and Telecommunications. Mr. Katz has over 30 years of experience working in the private sector.
His term ends on October 11, 2012.

Tom Pentefountas – Vice-Chairman, Broadcasting

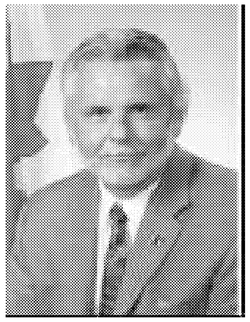
Appointed Vice-Chairman, Broadcasting on April 4, 2011. From 1996 to 2011, he was a member of the Montreal-based law firm Silver Sandiford and represented clients in several judicial districts in Quebec, Ontario, New Brunswick and Nova Scotia. For a period of two years, he hosted a radio show on CKDG-FM Montreal, providing his expertise on human rights, criminal law and the Canadian Charter of Rights and Freedoms. He was also a regular contributor to the "Gang of Four" on CJAD Montreal. In 2003, he joined the political party Action démocratique du Québec.
His term ends on April 3, 2016.

APPENDIX A – CRTC COMMISSIONERS



Suzanne Lamarre – Commissioner, Quebec Region

Began her term as Regional Commissioner for Quebec on June 30, 2008. Prior to her appointment to the CRTC, she spent two decades at the Canadian Broadcasting Corporation, where she gained experience in broadcasting engineering and national and international regulatory affairs. Her term ends on June 29, 2013.



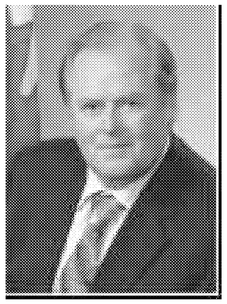
Stephen B. Simpson – Commissioner, British Columbia and Yukon

Appointed as Regional Commissioner for British Columbia and the Yukon on June 23, 2008. During his career, he has acquired considerable experience in marketing, public relations, advertising, media production and broadcasting. A former radio broadcaster, he has also served in management roles for several stations. His work has been recognized with multiple Clio Awards and International Broadcast Awards. His term ends on June 22, 2013.

Elizabeth A. Duncan – Commissioner, Atlantic Region

Appointed Regional Commissioner for the Atlantic Region on May 2, 2005. Prior to her appointment Mrs. Duncan was Chief Financial Officer of a publicly traded software development firm. She brings with her considerable experience in the cable television industry, most recently as Senior Vice President and Chief Financial Officer of Access Communications Incorporated in Dartmouth, Nova Scotia. Her term runs until May 1, 2014.

APPENDIX A – CRTC COMMISSIONERS



Peter Menzies – Commissioner, Alberta and Northwest Territories

Appointed as Regional Commissioner for Alberta and Northwest Territories, effective June 5, 2009. President of Menzies Strategies, he has wide-ranging experience in the field of print journalism. Mr. Menzies received a National Newspaper Award for his role in coordinating a special series on the national referendum on the Charlottetown Accord. His term ends on June 4, 2014.

Candice J. Molnar – Commissioner, Manitoba and Saskatchewan

Appointed Regional Commissioner for Manitoba and Saskatchewan, effective January 7, 2008. Having spent over two decades at SaskTel, she brings to the CRTC a wealth of knowledge and experience in telecommunications and broadcast distribution regulatory affairs. Her first term ended on January 6, 2012. Her second term ends on January 6, 2017.

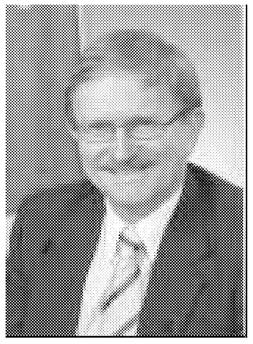
APPENDIX A – CRTC COMMISSIONERS

Marc Patrone – Commissioner

Appointment as Commissioner on March 19, 2008. An experienced broadcast journalist, Mr. Patrone is known for his coverage of regional business and cultural affairs. Prior to his appointment, he spent 14 years as a legislative and general assignment reporter with CTV Atlantic. His term ends on March 18, 2013.

Louise Poirier – Commissioner

Began her term as Commissioner on August 11, 2008. A municipal councillor for the City of Gatineau between 1999 and 2008, she held many responsibilities including that of President of the Société de transport de l'Outaouais. Before entering municipal politics, she spent 15 years in the communications field. She has also climbed Mount Kilimanjaro for the foundation of the Centre de santé et des services sociaux de l'Outaouais. Her term ends on August 10, 2013.



Timothy Denton – Commissioner

He began his term as Commissioner on August 1, 2008. He has broad experience in legal and policy matters in the areas of telecommunications, broadcasting and the Internet. Most recently, Mr. Denton has been involved in the governance of the domain name industry through his work with the Internet Corporation for Assigned Names and Numbers. His term ends on July 31, 2013.

APPENDIX B – KEY ASKS

This Appendix contains both our key 'asks' from CBC/Radio-Canada's original licence renewal filing for our television and radio assets as well as more recent requests/considerations

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CBC/RADIO-CANADA LICENCE RENEWAL
KEY ASKS FOR CBC TV

Current Licence Terms

A few licence conditions:

- Regional priority programming programming
- Closed captioning
- Codes of conduct – industry codes plus CBC/RC codes

Numerous licence expectations:

- Canadian content (75% throughout the day and 80% in prime time)
- Regional production for the network
- Prime time drama programming
- Performing arts
- Children and youth programming
- Local/regional programming for the region
- Described video

Proposed Licence Terms

A few licence conditions that reflect CBC TV programming priorities and are consistent with CRTC policy:

- Canadian content (75% throughout the day and 80% in prime time)
- Local/regional programming weekly minimums – 7 hrs/wk in small markets and 14 hrs/wk in large markets
- 7 hrs/wk in prime time of Programs of National Interest, i.e. Cdn drama, docs and award shows
- Industry only codes of conduct
- Acceptance of industry-standard obligations on accessibility, i.e. closed captioning, audio description and described video
- No genre-based programming expectations proposed, e.g. kids, performing arts

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CBC/RADIO-CANADA LICENCE RENEWAL: KEY ASKS FOR LA TÉLÉVISION DE RADIO-CANADA

Current Licence Terms

A few licence conditions:

- Regional priority programming
- 5 h/week Dance/music/variety programming
- 4 h/week of original Canadian children's programming
- Closed captioning
- Codes of conduct – industry codes plus CBC/RC codes

Numerous licence expectations:

- Canadian content (75% throughout the day and 80% in prime time)
- Regional production for the network
- Prime time drama programming
- Performing arts
- Children and youth programming
- Local/regional programming for the region
- Described video

Proposed Licence Terms

A few licence conditions that reflect R-C's TV programming priorities and are consistent with CRTC policy and decisions:

- Canadian content (75% throughout the day and 80% in prime time)
- Local/regional programming weekly minimums – 5 hrs/wk in all markets
- 6 hrs/wk in prime time of Programs of National Interest, i.e. Cdn drama, docs and award shows (Under revision due to DRAP)
- Industry only codes of conduct
- Acceptance of industry-standard obligations on accessibility, i.e. closed captioning, audio description and described video
- No genre-based programming expectations proposed, e.g. kids, performing arts

CBC/RADIO-CANADA LICENCE RENEWAL: KEY ASKS FOR CBC RADIO/RADIO DE RADIO-CANADA

Current Licence Terms

- **Canadian Content:** 50% of popular music selections (cat. 2) and 20% of special interest music selections (cat. 3)
- **French-Language Music Expectations:** 85% of vocal music selections broadcast must be in French, Limit English-language vocal music selections to 5% and must be Canadian (applicable to Espace Musique/Premiere Chaine only)
- **Advertising prohibited**

  Adherence to internal policy + industry code of conduct on Equitable Portrayal

  Expectations of hours/week of local programming – varies by station

Proposed Licence Terms

- Maintain status quo for Canadian content COLs
- Maintain commitment to 85% franco and eliminate the 5% limit on anglo music
- Maintain prohibition on advertising for Radio One and Premiere Chaine.
- Request to introduce national advertising on Radio 2 and Espace Musique
- Adhere to industry code
- No hard commitments to levels of local service
- Introduce commitments respecting emerging Canadian artists
- Introduce commitments respecting distinct musical selections

CBC/RADIO-CANADA LICENCE RENEWAL: KEY ASKS FOR OUR SPECIALTY SERVICES

French Language Specialties

- **RDI:** no substantial changes for the service
- ✓ adopt new standard licence conditions for mainstream news specialty services, plus regions
- ✓ extend mandatory distribution orders for next licence term
- **ARTV:** status quo with minor modifications

English Language Specialties

- **CBC News Network:** no substantial changes for the service
- ✓ adopt new standard licence conditions for mainstream news specialty services
- ✓ extend mandatory distribution orders for next licence term
- **Documentary:** status quo with minor modifications